'REPORTABLE'

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 14699-14701 OF 2015

NEMAI CHANDRA DEY (DEAD) THROUGH LRS. Appellant(s)

VERSUS

PRASANTA CHANDRA (DEAD) THROUGH LRS. & ANR. Respondent(s)

J U D G M E N T

K. M. JOSEPH, J.

(1) This is yet another case where contrary to the vision of the founding fathers, non-adherence to the principles governing the exercise of power by the first appellate Court has driven the parties to the highest Court. The principles entrenched in Order XLI Rule 31 of the Code of Civil Procedure, 1908, which has been the subject matter of catena of decisions of this Court, lay down the manner in which an appeal in a civil suit must be considered by the Appellate court. A further appeal to the High Court lies only on substantial questions of law. Therefore, the law contemplates that a party aggrieved by the decision of the

trial Court gets full opportunity to have his grievance investigated by the first Appellate Court which is expected to reappreciate the evidence and consider the matter unless it be that it purports to invoke the power under Order XLI Rule 11.

(2) The plaintiff in this case was wife of the uncle of the first defendant. Both the original plaintiff and the first defendant have passed away. The *lis* is at present being taken forward by their legal representatives.

This suit was one filed by the plaintiff seeking *inter alia* declaration of two documents which are styled as gift deeds dated 29.07.1990 and 30.07.1990 as void. The Suit came to be filed in the year 1999. The prayer sought in the suit are as follows:

> **"(a) There be a decree for declaration of title of the plaintiff in the property described in Schedule B and that the alleged two gift deeds are void and not executed by the plaintiff and decree for permanent injunction restaining the defendants from creating any claim or breach of peace on the basis of the alleged gift deed.**
>
> **b) if the plaintiff is declared to have title in property in schedule B according to the learned Court or she is dispossessed during the pendency of the suit then a decree for restitution of Vhas possession with the help of court in the said property.**
>
> **c) All costs of the court**
>
> **d) Any other relief the Plaintiff may get in law or equity be decree."**

(3) Evidence was led by the parties. The plaintiff herself was examined as PW 1. She has undoubtedly deposed that the first defendant who was looking after her, after the death of her husband, impressed upon her for the need for a power of attorney and it is this which led her to execute the documents which she discovered later were actually gift deeds in favour of the defendant.

(4) The case of the appellants' predecessor was that the first defendant was, in fact, taking care of plaintiff after the death of the paternal uncle of the first defendant and it is out of love and affection and that the gift deeds were indeed executed. The defendant has purported to examine the scribe and attesting witness among other evidence. The trial Court came to the conclusion on an appreciation of evidence which, no doubt, according to the appellants, was not carried out in the manner contemplated or warranted in the facts of the case that the gift deeds were void and liable to be cancelled. On the said reasoning, the trial Court proceeded to decree the suit. The trial Court proceeded on the basis that the plaintiff was a pardahnashin lady and the character of the document was not brought to the notice of the plaintiff.

(5) The first defendant appealed. In the first Appellate Court, the problem of the parties begins. This is so for the reason that contrary to the command of law which has

been reiterated on a number of occasions by this Court, the appellate Court finds as follows:

> **"I have gone through the find of both sides referred by Ld. Lawyers of both sides. Both Mr. A. K. Misra, Ld. Lawyer of the app and Mr. S.Rahaman, Ld.Lawyer of Respondent have elaborately discussed the findings referred by them.**
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> **After hearing argument of both sides and after giving my anxious thought over the matter I am constrained to hold that the argument of App is not tenable and the argument of Respondent is much acceptable and the decision cited by the Ld. Advocate for the Respondent is sustainable and rightly accepted by the court below and as such no interference in the judgment and decree of the Court below is required by any means.**
>
> **As a result, this appeal is likely to be dismissed and the judgment and decree passed by the court below is affirmed. Hence it is ordered that the appeal be and the same in dismissed on contest but without cost.**
>
> **Let a x-rox copy of the judgment be sent to Ld. Lower Court at an early date."**

(6) We may only notice what this Court on one occasion has declared in *Madhukar and Others* v. *Sangram and Others* (2001) 4 SCC 756. This Court, *inter alia*, referred to an earlier judgment reported in *Santosh Hazari* v. *Purushottam* (2001) 3 SCC 179 wherein it is stated as follows:

> **"6. In *Santosh Hazari* v. *Purushottam Tiwari* [(2001) 3 SCC 179 : JT (2001) 2 SC 407] this Court opined: (SCC pp. 188-89, para 15)**
>
> > **"The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application**

> **of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. … while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it."**

(7) We have no difficulty whatsoever in coming to the conclusion that the first Appellate Court clearly has not discharged its duties as the first Appellate Court. As already noticed, the scheme of the Constitution, *inter alia,* is that the findings of fact are ordinarily to attain finality at the hands of the Court of Appeal and it is only on substantial questions of law that the High Court can interfere in the findings of the first Appellate Court. Therefore, apart from reiterating that it is a valuable right of the party which is at stake, it would not be conducive to the interest of administration of justice that findings of fact are rendered without due care and application of mind to the evidence and the law governing the parties. We say for the reason that any breach of duty by the first appellate Court in this regard has far reaching consequences on the administration of justice.

(8) The case which is not decided in the manner contemplated under law, can finally culminate in the litigants approaching the highest Court and invoking power

under Article 136 of the Constitution of India. Power under Article 136 is intended to be used rarely. This is an extraordinary jurisdiction.

(9) The founding fathers contemplated that Courts at each level discharge their duties as contemplated under law. That means that the first Appellate Court will reappreciate the evidence, consider the arguments and apply the law and arrive at findings. Only then limiting of the jurisdiction of the High Court to only cases where substantial question of law arises would be justified. Approach to this Court under Article 136 could be on rare occasions only. We say nothing more except to reiterate that it is the bounden duty of the first appellate Court to deal with appeals within the confines of law and keeping in mind the principles which have been enumerated under Order XLI Rule 31 and various judgments of this Court.

(10) Being dissatisfied, the appellants carried the matter to the High Court in second appeal.

On one occasion, the High Court dismissed the appeal on account of the absence of the appellants and under Order XLI Rule 11. This is impugned. Thereafter the matter was taken up and then followed the next impugned judgment. In the said impugned judgment, the High Court proceeded to find that the judgment of the trial Court was elaborate and detailed and thereafter, the Court was of the view that the

contentions of the plaintiff was inevitable and the Court below was correct in arriving at the findings returned. The appellants was not able to show any perversity in the impugned judgments. The five substantial questions of law did not appeal to the Court. The appellants did not show any material to establish that the findings of fact returned by the trial Court and affirmed in appeal was perverse. And so far as burden of proof was concerned, the trial Court had not acted irregularly in arriving at the findings. Therefore, the Court did not find it appropriate to recall the order.

(11) When this Court initially heard the matter, on 25.08.2014, it issued notice and also granted stay of further proceeding of execution. Thereafter, it would appear that by order dated 16.12.2015, the interim order granted earlier was vacated. But by the same order, the Court granted leave and it is thereafter, the matter came before us.

(12) We have heard the learned counsel for the appellants and also the learned counsel for the respondents.

(13) Learned counsel for the appellants would point out that the case of the appellants has not been considered by the appellate Court, the point which we have already noted. No doubt, learned counsel for the respondents supported the order of the High Court.

(14) As we have noticed, the High court has proceeded on the basis that the consideration by the first appellate Court to the findings of the trial Court constituted concurrent findings as if this is a case where the first appellate Court has discharged its duties and given its approval to the trial Court findings. One could have understood the High Court so holding in a case where the first appellate Court had considered the appeal in the manner provided by law and as established by long line of judgments. We are clear in mind that this is indeed one such case where by virtue of the first appellate Court having failed to discharge its duties, in the facts of this case, remand to the first appellate Court is warranted.

This is so for the reason that the suit was contested. Parties led elaborate evidence. What is taken in defence was the validity of the two registered gift deeds, which according to the first defendant were executed lawfully. In this connection there is a contention raised by the appellants that the plaintiff has executed a number of documents by way of sale deeds. The plaintiff, according to the appellants was, in fact, literate, though a pardahnashin lady. The first defendant has a case that it was a suit which was laid on the strength of the influence wielded by the nephew of the plaintiffs-sister in whose house the plaintiff was staying for some time. The scribe has been

examined as a witness. The attesting witness has been examined. We may notice in this regard, no doubt that in respect of a pardahnashin lady, this Court has followed the view taken by the Privy Council and reiterated the principles in *Mst. Kharbuja Kuer* v. *Jangbahadur Rai and Others* AIR 1963 1203. In this case, no doubt, the plaintiff has given evidence that she executed the gift deeds in question on the basis of her being under the impression that power of attorney was executed. There were other items of evidence which were before the Court also. We do not wish to say anything more in view of the order of remand that we are passing. We are of the view that the interest of justice do require a remand to the first appellate Court in the nature of the order which has been passed by the Courts.

(15) Accordingly, the impugned judgments will stand set aside. The appeals are allowed. We remand the case back to the first appellate Court which will take up T.A. No. 18/2010. The appellate Court will proceed to dispose of the appeal with notice to the parties and bearing in mind the principles which are well settled and do not require any reiteration. As the appeal emanates from the suit of the year 1999, we direct that the first appellate Court will dispose of the appeal as early as possible and preferably within a period of six months from the date on which a copy of the judgment is placed before it. We make it clear that

we have not pronounced on the merits of the either sides.

Parties will bear their respective costs.

……., J.
[K.M. JOSEPH]

……., J.
[HRISHIKESH ROY]

New Delhi;
April 19, 2022.

ITEM NO.3 COURT NO.10 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos. 14699-14701/2015

NEMAI CHANDRA DEY (DEAD) THROUGH LRS. Appellant(s)

VERSUS

PRASANTA CHANDRA (DEAD) THROUGH LRS. & ANR. Respondent(s)

(With IA No. 66542/2021 - GRANT OF INTERIM RELIEF)

Date : 19-04-2022 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Appellant(s) Mr. Joydeep Mazumdar, Adv.
Mr. Rabindra Narayan Dutta, Adv.
Mr. Rohit Dutta, Adv.
Mr. Priyata Chakraborty, Adv.
Ms. Shalini Kaul, AOR

For Respondent(s) Mr. Shaffi Mather, Adv.
Mr. Siddhartha Chowdhury, AOR

Mr. Amit Pawan, AOR
Mr. Hassan Zubair Waris, Adv.
Ms. Shivangi, Adv.
Mr. Aakarsh, Adv.
Mr. Abhishek Amritanshu, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are allowed in terms of the signed reportable judgment.

Pending application stands disposed of.

(NIDHI AHUJA) **(RENU KAPOOR)**
AR-cum-PS **BRANCH OFFICER**
[Signed reportable judgment is placed on the file.]